



October 6, 2000

Mr. Alan Rhodes
Underwood, Wilson, Berry, Stein & Johnson, P.C.
Attorneys and Counselors at Law
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2000-3860

Dear Mr. Rhodes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140353.

The Tulia Independent School District (the "district"), which you represent, received a written request for "the roster of students selected for the random drug tests." You explain that the district has instituted a student drug testing program whereby all students who participate in extra-curricular activities are required to be subject to random drug tests, and that any other student may voluntarily submit to such random selection for drug testing. You contend that the identities of students who are randomly chosen for drug testing are excepted from disclosure under section 552.026 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.¹

Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other

¹Because we resolve your request under section 552.026 and FERPA, we need not address your other arguments for withholding the information.

than directory information) contained in a student's education records to anyone but certain numerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent.² See 20 U.S.C. § 1232g(b)(1). When a student has attained the age of eighteen years or is attending an institution of postsecondary education, the student holds the rights accorded by Congress to authorize the inspection of these records. 20 U.S.C. § 1232g(d). "Education records" is defined as those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A).

An educational institution or agency may, however, release "directory information" to the public if the educational institution or agency has designated the information as such in compliance with certain procedures. See *id.* § 1232g(a)(5)(B). The statute gives the following examples of directory information: "the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student." *Id.* § 1232g(a)(5)(A). Additionally, this office has determined that the following categories of information constitute directory information: marital status and expected date of graduation, Open Records Decision No. 96 (1975); student rosters, Open Records Decision No. 244 (1980); and student parking permit information, Open Records Decision No. 242 (1980).

For purposes of FERPA, the records at issue constitute "education records" in that they contain information about identifiable students. In your brief to this office, you state that the district "believes that the requested information is not directory information." We infer from this statement that the district has not designated the requested information as directory information in compliance with section 1232g(a)(5)(B). Section 1232g(a)(5)(B) provides as follows:

Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

²In Open Records Decision No. 634 (1995), this office concluded that an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions. In accordance with this office's directive in Open Records Decision No. 634, the identities of the students at issue have been redacted from the records you submitted to this office.

Absent such a designation by the district, we conclude that the district must withhold the requested information pursuant to section 552.026 of the Government Code unless the district receives permission to release the information from the parent of the respective student or from the student himself, if qualified to do so as specified above.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Julie Reagan Watson". The signature is written in dark ink and includes a long horizontal flourish at the end.

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/RWP/ljp

Ref: ID# 140353

Encl. Submitted documents

cc: Mr. Gary O. Gardner
Vigo Park Station
Tulia, Texas 79088
(w/o enclosures)